

2. The Surety is a Wisconsin corporation with its principal place of business and residence in Brookfield, Wisconsin. For purposes of diversity jurisdiction, the Surety is a citizen of Wisconsin; it is not a citizen of Maryland.¹

3. Defendant American Structures, Inc., (“ASI”) is a Wisconsin corporation with its principal place of business and residence in Menomonie, Wisconsin. For purposes of diversity jurisdiction, ASI is a citizen of Wisconsin; it is not a citizen of Maryland.

II. PROCEDURAL BACKGROUND

4. On February 22, 2019, Whiting-Turner filed this lawsuit against the Surety and ASI styled *Whiting-Turner Contracting Company vs. Old Republic Surety Company*, Cause No. DC-19-02691, in the 116th Judicial District Court of Dallas County, Texas (the “State Court Action”).

5. The State Court Action is currently pending in the 116th Judicial District Court of Dallas County, Texas.

6. The Surety received Plaintiff’s Original Petition (“Petition”) on February 27, 2019. A true and correct copy of the Petition along with a copy of the citation are attached hereto as **Exhibit A** and incorporated herein by reference.

III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

7. The State Court Action is removable to this Court under 28 U.S.C. § 1441(a) based on the original jurisdiction conferred upon by this Court by 28 U.S.C. §

¹ To the extent that Whiting-Turner intended to sue Old Republic Insurance Company, Old Republic Insurance Company is a Pennsylvania corporation with its principal place of business and residence in Pennsylvania. For purposes of diversity jurisdiction, it is a citizen of Pennsylvania; it is not a citizen of Maryland.

1332(a)(1). This case is a civil dispute between citizens of different states. There is, and was at all relevant times complete diversity of citizenship between the plaintiff and the defendants.

8. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as evidenced by the Petition. In its Petition, Whiting-Turner seeks monetary relief of over \$1,000,000.

IV. **VENUE**

9. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the district and division of this Court embrace Dallas County, Texas, the location where Whiting-Turner filed its State Court Action.

V. **REMOVAL REQUIREMENTS**

10. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1). This Notice of Removal is filed within thirty (30) days of February 27, 2019, the date the Surety received the Petition, the initial pleading setting forth the claim for relief in the State Court Action. See Ex. A.

11. In accordance with 28 U.S.C. § 1446(d), written notice of this Notice of Removal will be promptly given to Whiting-Turner, through its counsel of record, and a copy of this Notice of Removal will be filed with the clerk of the 116th Judicial District Court of Dallas County, Texas, where the State Court Action is pending.

12. As required by 28 U.S.C. § 1446(a) and Local Rule 81.1, the following items are filed herewith and incorporated by reference: a separately filed civil cover sheet; a separately filed supplemental civil cover sheet; an index of documents filed in state court, attached hereto as **Exhibit B**, and incorporated herein by reference; a copy

of the state court docket sheet, attached hereto as **Exhibit C**, and incorporated herein by reference; copies of all documents filed in the State Court Action, attached hereto as **Exhibit D-1, D-2, D-3, and D-4**, and incorporated herein by reference; and a separately signed certificate of interested persons attached hereto as **Exhibit E**, and incorporated herein by reference.

13. ASI consents to the removal of the state court action to federal court.

Exhibit F.

14. By filing this Notice of Removal, the Surety does not intend to waive any claims or defenses it may have.

WHEREFORE, Defendant Old Republic Surety Company, incorrectly named as Old Republic Insurance Company d/b/a Old Republic Surety Company, prays that the State Court Action now pending in the 116th Judicial District Court of Dallas County, Texas, Cause No. DC-19-02691, be removed to this Court, along with all asserted claims and causes of action, and ask that this Court make and enter such further orders as may be necessary and proper.

Respectfully submitted,

/s/ Christopher R. Ward

CHRISTOPHER R. WARD

State Bar No. 24008233

christopher.ward@clarkhillstrasburger.com

BENJAMIN L. WEIBLE

State Bar No. 24068834

ben.weible@clarkhillstrasburger.com

CLARK HILL STRASBURGER

2600 Dallas Parkway, Suite 600

Frisco, Texas 75034

Telephone: (214) 651-4722

Facsimile: (214) 659-4108

AND

DAVID D. GILLISS

Maryland Federal Bar No. MD05174

gilliss@pikegilliss.com

PIKE & GILLISS, LLC

600 Washington Avenue, Suite 303

Towson, Maryland 21204

Telephone: (443) 761-6500

Facsimile: (443) 761-6519

(Pending Admission Pro Hac Vice)

ATTORNEYS FOR DEFENDANT OLD
REPUBLIC SURETY COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing is being forwarded to all counsel listed below on March 13, 2019, *via* email.

SCOTT GRIFFITH
sgriffith@griffithdavison.com
JASON L. CAGLE
jcagle@griffithdavison.com
GRIFFITH DAVISON & SHURTLEFF, PC
13737 Noel Rd., Ste. 850
Galleria North Tower I
Dallas, TX 75240

*Attorney For Plaintiff,
The Whiting-Turner Contracting Company*

JAMES R. CASE
jcase@dykema.com
DYKEMA GOSSETT
400 Renaissance Center
Detroit, MI 48243

*Attorney for Defendant,
American Structures, Inc.*

/s/ Benjamin L. Weible
Benjamin L. Weible